

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4432 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUSHILABEN W/O. KILAVARSINH D JHALA

Versus

DIRECTOR OF PENSION AND PROVIDENT FUND

Appearance:

MRS DT SHAH for Petitioner

MR DA BAMBHANIA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/10/97

#. The petitioner, a widow of Shri Kilavarsinh D. Jhala, has filed this petition and prayed for direction to the respondents to pay her family pension from 1.10.1977 with all consequential benefits.

#. It is not in dispute that family pension has been given to the petitioner by respondent with effect from 1.4.92 when the petitioner had approached this Court

through Mahila Utkarsh Trust. However, in the present Special Civil Application the claim of the petitioner for family pension is from 1.10.1977. Reply to the Special Civil Application has been filed and contention has been made therein that the husband of the petitioner remained absent for a period of more than eight years and as such it is found that the petitioner is not entitled for family pension. However, she has been given family pension in pursuance of the Government Resolution dated 24th March 1992 and 3rd August 1992. A copy of the Resolution dated 3rd August 1992 has been filed on record of this Special Civil Application.

#. The respondents are wholly incorrect and in fact have acted highly arbitrarily in putting in service the aforesaid Resolution of the Government to justify their action to give family pension to the petitioner only from 1.4.92. This Resolution related to grant of family pension to the dependents of the Government servants who died while in service or retired from services on or before 1st May 1960 and as such, this Resolution aforesaid of the Government is not applicable to the present case. The defence of the respondent that the petitioner's husband was absent from duty for a period of more than eight years is wholly arbitrary and unjustified. The respondents have failed to produce any material in support of this contention on record of the Special Civil Application.

#. During the course of arguments, the learned counsel for respondents contended that service record of the husband of the petitioner is not traceable. It has further been contended that the Taluka Development Officer, Taluka Panchayat, Kutch-Bhuj, has not sent service record of the husband of the petitioner to respondents. In absence of the record, what the learned counsel for respondent contended that the family pension could not have been fixed and when this Court has given direction, family pension has been fixed with effect from 1.4.92.

#. I fail to see any justification in any of the aforesaid contentions of the learned counsel for respondents. In the Special Civil Application, the petitioner has made reference to many of the Resolution of the Government including Resolution dated 1st May 1990. In pursuance of the decision of this Court, the Government has resolved that the benefit of Family Pension Scheme, 1972, should be extended to all eligible members of the families including dependents with effect from 1st October 1977 as per the rates prescribed in the

Finance Department Resolution dated 29th October 1975. It has further been resolved that the interest on arrears of family pension has to be paid at the rate as provided therein. It is not the case of respondents that the case of petitioner was not covered under the aforesaid Resolution. In view of this fact, the claim of the petitioner for family pension from 1st October 1977 deserves to be accepted. It is unfortunate that the poor lady whose husband had served as primary teacher in the Taluka Panchayat, has been put to agony and sufferings to the extent where she had to incur expenses of litigation for getting family pension. This is the second litigation in the series for relief of family pension. It is true that family pension has been granted to the petitioner from 1.4.92 but the respondents have failed to successfully defend their action of not giving the family pension to the petitioner from 1st October 1977. The Resolution dated 11th May 1990 has been passed for giving benefit of family pension to eligible widow in the family with effect from 1.10.77 and the action of respondents not to extend benefit of that Resolution to the petitioner is wholly arbitrary and unjustified.

#. In the result, this Special Civil Application is allowed and it is hereby declared that the petitioner is entitled for family pension with effect from 1st October 1977. The respondents are directed to determine the arrears of family pension which are payable to the petitioner on the basis of her claim from 1st October 1977 and payment thereof shall be made immediately thereafter. This exercise has to be undertaken and completed within a period of six months from the date of receipt of copy of this order. The petitioner has unnecessarily been dragged in this litigation and she has been denied the family pension for which she was entitled and as such the respondents are directed to pay interest to the petitioner on the arrears of family pension at the rate of 15% p.a. from 1st May 1990 till the date of payment thereof. The amount of interest is also to be paid within stipulated period as granted for other reliefs. The respondents are further directed to pay Rs.1,500/- by way of costs of this Special Civil Application to the petitioner. The petitioner is a lady residing at Village Vana, Taluka Laktad, Dist. Surendranagar. The respondent No.1 is therefore directed to see that the amount of arrears of family pension together with interest and costs of this litigation are paid to the petitioner at her village within the period aforesaid. Some officer from the office of respondent No.1 should go to the village of the petitioner to pay this amount by account payee draft. Rule made absolute

in aforesaid terms with no order as to costs.

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(sunil)